

AKIN GUMP STRAUSS HAUER & FELD LLP

One Bryant Park
New York, New York 10036
Telephone: (212) 872-1000
Facsimile: (212) 872-1002
Ira S. Dizengoff
Philip C. Dublin
Abid Qureshi
Sara L. Brauner

*Counsel to the Official Committee of
Unsecured Creditors of Sears Holdings Corporation, et al.*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

SEARS HOLDINGS CORPORATION, et al.,

Debtors.¹

:
: Chapter 11
:
: Case No. 18-23538 (RDD)
:
: (Jointly Administered)
:

**JOINDER OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
TO DEBTORS' OBJECTION TO MOTION OF OMEGA ADVISORS INC.
REGARDING SALE OF MEDIUM-TERM INTERCOMPANY NOTES**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc.(4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

The Official Committee of Unsecured Creditors (the “Creditors’ Committee”) of Sears Holdings Corporation and its affiliated debtors and debtors in possession (collectively, the “Debtors”), by and through its undersigned counsel, hereby submits this joinder (the “Joinder”) to the *Debtors’ Objection to Motion of Omega Advisors Inc. Regarding Sale of Medium-Term Intercompany Notes* [ECF No. 1196] (the “Objection”).² In support of this Joinder, the Creditors’ Committee respectfully states as follows.

JOINDER AND RESERVATION OF RIGHTS

1. The Creditors’ Committee agrees with the arguments raised by the Debtors in their Objection in respect of the fairness and transparency of the Debtors’ sale process and the Debtors’ exercise of their business judgment in selecting Cyrus as the purchaser of the MTNs. Accordingly, the Creditors’ Committee expressly joins, adopts, and incorporates such arguments as set forth herein.

2. After thorough and careful consideration of the bids received, the Creditors’ Committee determined to support the sale of the MTNs to Cyrus as the most value-maximizing option available to the Debtors. The Cyrus bid represented both the highest cash payment (\$82.5 million) and the lowest execution risk in light of the uncertainties associated with whether the MTNs would meet the requirements for delivery into the ISDA auction. Moreover, as set forth in the Objection, the Creditors’ Committee agrees that the terms of the Sale Order did not limit the sale to a specific amount of MTNs, nor did the Sale Order restrict, in any way, the sale of MTNs held by non-Debtor affiliate Sears Re. Finally, the relief sought by the Motion is at odds with the strong preference for finality in bankruptcy sales when a purchaser of estate assets is deemed a good-faith purchaser pursuant to Bankruptcy Code section 363(m). *See* Sale Order ¶

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Objection.

7; *see also In re WestPoint Stevens, Inc.*, 600 F.3d 231, 248-249 (2d Cir. 2010) (emphasizing the “uniquely important interest in assuring the finality of a sale that is completed pursuant to 11 U.S.C. § 363(b) or (c) in bankruptcy proceedings” because “without this assurance of finality . . . purchasers could demand a large discount for investing in property that is laden with the risk of endless litigation”) (internal citations and quotations omitted).

3. In view of the foregoing, the Creditors’ Committee believes that the Debtors exercised sound business judgment in conducting the auction for, and selecting Cyrus as the purchaser of, the MTNs. Accordingly, by this Joinder, the Creditors’ Committee requests that the Court deny the Motion.

4. The Creditors’ Committee reserves the right to supplement and join in any other filings and to present further arguments at any hearing on the Motion.

New York, New York
Dated: December 13, 2018

AKIN GUMP STRAUSS HAUER & FELD LLP

/s/ Ira S. Dizengoff

Ira S. Dizengoff

Philip C. Dublin

Abid Qureshi

Sara L. Brauner

One Bryant Park

New York, New York 10036

Telephone: (212) 872-1000

Facsimile: (212) 872-1002

E-mail: idizengoff@akingump.com

pdublin@akingump.com

aqureshi@akingump.com

sbrauner@akingump.com

*Counsel to the Official Committee of Unsecured
Creditors of Sears Holdings Corporation, et al.*